

REMARKS

The election of Invention I claims 1-15, 18-34, 55, and 62-73 is made with traverse, as Applicant respectfully submits that Inventions I and II are not properly related as a combination and subcombination as alleged in the Office Action. In addition, Applicant respectfully asserts that a search and examination of all of the pending claims in the application can be made without serious burden on the Examiner. In doing so, Applicant retains the right to petition from the requirement under 37 C.F.R. §1.144. Applicant respectfully requests the Examiner to reconsider and withdraw the restrictions requirement and proceed with the prosecution on the merits of all of the presently pending claims.

Invention II as identified in the Office Action includes independent claim 16, and dependent claims 17, 35-40, 56-58, and 60-61 that each depend either directly or indirectly from claim 16. The Office Action asserts that Inventions I and II are distinct because “it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability.” Office Action p. 2. The Office Action refers to MPEP § 806.05(c) for support for the preceding assertion. *Id.*

Applicant respectfully asserts that the pending claims are not directed to two separate inventions because two-way distinctness cannot properly be shown for “Inventions I and II.” The independent claims of Invention I (Claims 1, 13, 18 and 62) each recite one of a “fastener” or a “fastener assembly.” For example, claim 13 recites “a fastening element, a fastener comprising a housing sized and adapted to retain the fastening element and a depressable latch positioned relative to the housing so the depressable latch in combination with the housing retains the fastening element.” Independent claim 16 (“Invention II”) recites a “device” where the device is adapted to contain fluid and includes a “substantially impermeable fluid bladder,” a “housing sized and adapted to retain a fastening element,” and a “latch positioned relative to the housing so that the latch in combination with the housing retains the fastening element,” where the “latch comprises a flange generally parallel to a base of the housing.”

Two-way distinctness requires a showing that the particulars of the subcombination (i.e., details concerning the fastener) are not required for patentability of the combination (i.e., the device adapted to contain fluid). MPEP § 806.05(c). Applicant respectfully submits that the Office Action fails to make the required showing of two-way distinctness. More specifically, if the details concerning the fastener, housing and latch as recited in claim 16, are removed from

independent claim 16, then claim 16 simply recites a “substantially impermeable fluid bladder.” Applicant respectfully asserts that claims 16-17, 35-40, 56-58, and 60-61 require the details of the “fastening element” and related structure, i.e., “housing” and “latch” for patentability.

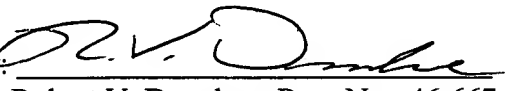
Further, MPEP § 806.05(c) also indicates that “to support a requirement for restriction, both two-way distinctness and reasons for insisting on restriction are necessary, i.e., separate classification, status, or field of search.” Applicant respectfully submits that the Office Action also fails to make a sufficient showing regarding any reasons for insisting on the restriction. For example, although the Office Action indicates that the Inventions have “a separate status in the art as shown by their different classification,” Applicant respectfully points out that the USPTO has already examined together in this application claims corresponding to Inventions I and II for a period of approximately two years as evidenced by the Office Actions mailed November 24, 2003, June 22, 2004, and January 26, 2005.

CONCLUSION

In view of the preceding remarks, Applicant respectfully requests the Examiner to reconsider and withdraw the restriction requirement and proceed with the prosecution on the merits of all of the presently pending claims.

A petition and fee for one-month extension of time is included herewith. If this response is not considered timely filed in view of the accompanying petition and fee, Applicant hereby requests any necessary extension of time. If there is a fee occasioned by this response, including an extension fee, that is not covered by the enclosed check, please charge any deficiency to Deposit Account No. 50/2762.

Respectfully submitted,
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